

11 San Francisco, California
Monday, January 31, 2025

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND
RECORDING 1:01 - 1:09 = 27 MINUTES

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1 Monday, January 25, 2025

1:01 p.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: We're here in civil action 20-560, Epic
5 Games, Inc. versus Apple, Inc. The Honorable Thomas S.
6 Hixson presiding.

7 Counsel, please state your appearances. Let's start
8 with Plaintiff's counsel.

9 MR. EVEN (via Zoom): Good afternoon, your Honor.
10 Yonatan Even for Epic Games.

11 THE COURT: Good afternoon.

12 MR. PERRY (via Zoom): Good afternoon, your Honor.
13 Mark Perry for Apple.

14 THE COURT: Good afternoon.

15 MR. LO (via Zoom): Good afternoon, your Honor.
16 Jason Lo for Apple.

17 THE COURT: Good afternoon.

18 I've received the parties status report. So, thank you
19 for that. Let me turn to Epic. Is there anything that you
20 wanted to add to the status report?

21 MR. EVEN: The only other thing, your Honor, is
22 that the parties have just, probably 40 minutes ago, filed a
23 status report about updating Judge Gonzalez Rogers about the
24 progress of the special masters, and I'm happy to update
25 your Honor about that if your Honor didn't have a chance to

1 read it yet, which wouldn't surprise me.

2 THE COURT: I did have the opportunity to read it.
3 So, thank you.

4 MR. EVEN: Then, other than that, I don't think we
5 have anything else at this point, your Honor.

6 THE COURT: And, the same question for Apple. Is
7 there anything that you would like to add that wasn't in the
8 status report?

9 MR. PERRY: No, your Honor, unless the Court has
10 questions for us, of course.

11 THE COURT: All right. Well, thank you.

12 For the first sets of objections to the special
13 masters' rulings, I issued two recent orders. One was
14 longer and I -- there's a follow up one today concerning one
15 document. Given the number of objections that have since
16 been lodged, it doesn't seem feasible for me to issue
17 reasoned orders addressing each document. And so, I am
18 likely, going forward, to just give you conclusions. Right
19 now, there are objections to more than 100 documents pending
20 before me, and it doesn't seem workable for me to write an
21 explanation for each and every one of those. So I just
22 wanted to set the parties expectations, that going forward,
23 given the large number of objections, you will likely just
24 get answers from the Court.

25 And then, let me ask the parties, to make sure I

1 understand the state of things, is it correct -- and let me
2 first ask Epic -- that there are approximately 11,000
3 documents pending before the special masters?

4 MR. EVEN: That is not my understanding, your
5 Honor. My understanding is that the special masters have
6 gone through about 5500 documents to date, and they have
7 about 18,000 documents left.

8 THE COURT: Okay. Apple, do you agree that it's
9 about 18,000 left?

10 MR. PERRY: Yes, your -- yes, your Honor. I was
11 doing the math in my head. Fifty-five hundred in --
12 correct. It's roughly that. I -- we've had a lot of debate
13 about numbers, so I want to be clear. They have reviewed
14 more than 5000 and there were 23,000 total. So it's -- it's
15 not exactly 18,000, but the math is what the math is.

16 THE COURT: Okay. All right. Well, thank you.

17 Does either side see utility in me setting a further
18 discovery status hearing? It seems like disputes, other
19 than privilege, have been resolved awhile ago, and it seems
20 that I am likely to be getting more objections from the
21 parties to the special masters' determinations, as more of
22 those determinations are made. And I can rule on those on
23 the papers. I'm happy to have another discovery status
24 conference if that would be useful, but I wanted to get your
25 thoughts about whether you think that would be useful.

1 First, let me ask Epic.

2 MR. EVEN: So, I think, your Honor, that I would
3 tentatively at least put something on calendar for two weeks
4 times, just because it's much easier to take something off
5 calendar than to then find some time that everybody could do
6 it on much shorter notice. I do think that that would be
7 advisable. I do think that we will need to see what Judge
8 Gonzalez Rogers does between now and then, given the late
9 February dates for the hearings. And so, that may well
10 become redundant, in which case, obviously, we are happy to
11 confer with Apple and let the Court know that there is no
12 dispute or anything else to provide.

13 THE COURT: And, Apple, what do you think?

14 MR. PERRY: Your Honor, I think I'm agreeing that
15 there's no current need for a conference. We could either
16 put one on and take it off, if it's not necessary, or not
17 put it on and ask the Court for one, if it necessary. I
18 don't -- I don't know that it makes a huge difference. We
19 have been doing them every other week on Fridays. I mean,
20 if we want just want to keep that cadence, we have no
21 objection to that, but I think we have not -- we don't see
22 any likelihood of -- right now, at least -- other than the
23 objections as the Court noted.

24 THE COURT: Okay. Well, I'm happy to put
25 something on calendar for two weeks from now, and then if

1 the parties don't think that it's necessary to have the
2 hearing, you can file a stipulation and proposed order to
3 vacate it. So, I'm looking at -- two weeks from now would
4 be Friday, February 14th, at 1:00 p.m. Pacific Time. Does
5 that work for Epic?

6 MR. EVEN: It does, your Honor. Thank you.

7 THE COURT: And for Apple?

8 MR. PERRY: Yes, your Honor.

9 THE COURT: All right. Thank you. Whether to
10 resume the hearings next month is -- for Judge Gonzalez
11 Rogers to decide, and she will address the issues of the
12 documents pending before the special masters, and those are
13 all decisions for her to make, but I did want to let the
14 parties know my thoughts and my recommendation.

15 Based on the documents that I've been reviewing in
16 camera, it seems that there's a fair degree of repetition
17 among them, and I realize that Epic has an argument that the
18 final production that Apple made to the special masters
19 differs in kind from what was done before this argument that
20 Epic set forth in the statement that was filed before Judge
21 Gonzalez Rogers. I express no opinion on that. I haven't
22 gotten the analysis of the privilege log in the way that
23 Epic has, so I don't know if that's accurate or not. But,
24 based on the documents that I've been reviewing, I've seen a
25 fair degree of repetition, and so I don't know that it's

1 worthwhile to wait until the special masters have reviewed
2 and ruled on every last claim of privilege before resuming
3 the hearings, and so I would think it might be preferable to
4 proceed with the hearings I schedule in February, provided
5 that there's some method by which Epic could file something
6 with the Court, or seek leave to file something with the
7 Court, down the road if some documents are later produced
8 that Epic thinks are important. But, I just wanted to share
9 that recommendation with the parties that I've developed,
10 based on the review of the documents that I've done to date.
11 And, obviously, that's an issue for Gonzalez Rogers to -- to
12 decide, and -- but I just wanted to -- to provide that
13 recommendation. And, in your discussions with her, you can
14 decide whether or not you want to discuss this
15 recommendation, but I just thought I would give the parties
16 the benefit of my view from the review that I've done so
17 far.

18 So, we're going to schedule a further hearing for
19 February 14th at 1:00 p.m. Before we end this hearing, let
20 me turn to each side. First, Epic, is there anything else
21 that you would like to address at this hearing today?

22 MR. EVEN: No, thank you, your Honor.

23 THE COURT: And is there anything else that Apple
24 would like to address at this hearing today?

25 MR. PERRY: No, thank you, your Honor.

1 THE COURT: All right. Thank you, Counsel. The
2 matter is submitted. We have a hearing scheduled for
3 February 14th at 1:00 p.m. If the parties conclude that
4 it's not necessary to proceed with that hearing, then please
5 file a stipulation and proposed order to vacate it.

6 And, with that, have a good afternoon, Counsel.

7 (Proceedings adjourned at 1:09 p.m.)

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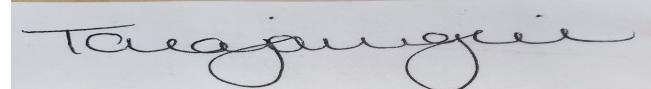
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